



CONTRACT # CT2957

BETWEEN

**SABRE COMMUNICATIONS CORPORATION
SIOUX CITY, IA**

AND

IOWA PUBLIC TELEVISION

**FOR THE ERECTION OF A
BROADCASTING TOWER
AT OTTUMWA, IOWA**

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1.0 WGH 12/1/05

2.2 IDENTIFICATION OF PARTIES

This agreement is made by and between Iowa Public Television, 6450 Corporate Drive, Johnston, IA 50131, a State of Iowa Agency (Owner) and Sabre Communications Corporation, 2101 Murray Street, P.O. Box 658, Sioux City, IA 51102-0658 (Contractor; Tower Contractor, Vendor) which is organized under the laws of the State of Iowa and authorized to do business in the state of Iowa.

It is the intent of the specifications and drawings to describe a complete project to be constructed in accordance with the Contract Documents. The Contract Documents, including any subsequent updates or revisions, comprise the entire agreement between the Owner and the Tower Contractor; they may be altered only by written modification. The Contract Documents are complementary, what is called for by one is as binding as if called for by all. In the event of a conflict within the contract documents, the more stringent conditions shall apply.

2.0 TERMS AND CONDITIONS

2.1 Definitions

The following terms shall have the meanings as set forth.

Agreement	The written agreement between the Owner and the Tower Contractor covering the work to be performed.
Bid	The offer or proposal of the Bidder setting forth the prices for the work to be performed.
Contract Documents	The Agreement, request for proposal, contractor's bid, and notice of award, specifications and drawings set forth herein comprise the Contract Documents.
Drawings	All drawings contained in the request for proposal and all drawings that have been prepared and submitted by the Bidder with the Bid.
Ice Shield	Any structure mounted on the tower designed and installed to protect tower mounted equipment from falling Ice or other material.
Ice Bridge	Structure installed at the bottom of the tower spanning the gap between the tower and the transmitter building. This structure will be designed to support, and protect from falling ice or other material, the transmission lines as they route between the tower and the transmitter building.
Owner	Iowa Public Television and / or The State of Iowa as represented by its officers and those designated as authorized to act in behalf of Iowa Public Television and / or The State of Iowa.
Owner's Engineer	Any qualified firms or individuals authorized by the Owner to act in the Owner's behalf in the review and approval of matters concerning the technical aspects of the Project.
Project	The entire construction to be performed as provided in the Contract Documents.

Specifications	The technical provisions for each system as contained in the Contract Documents.
Tower Contractor	Sabre Communications Corp. – The person, firm or corporation with whom the Owner has executed the Agreement.
Work	Any and all obligations, duties and responsibilities necessary to the successful completion of the project assigned to or undertaken by the Tower Contractor under the Contract Documents, including the furnishing of all labor, materials, equipment and other incidentals.

2.2 Incorporation of Documents

The RFP BD80500S358, any amendments and written responses to bidders' questions (collectively RFP) and the Vendor's Proposal submitted in response to the RFP will form the basis of the Contract between the Vendor and the Department and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the Contract specifically directs otherwise.

2.3 Order of Priority

In the event of a conflict between the Contract, the RFP and the Proposal, the conflict shall be resolved according to the following priority, ranked in descending order:

1. The Contract;
2. The RFP;
3. The Vendor's Original Proposal and revised proposal dated Nov. 8, 2005.
4. The Vendor's Acknowledgement

2.4 Delivery of Goods and Services ARO

The project commencement and completion dates for this project shall be indicated on the bid form by the General Contract bidder only. The bidder shall be expected to estimate these to the best of their ability. The Vendor shall include a detailed time line in number of working days on the expected delivery ARO of each of the deliverables in their proposal. At the discretion of the State, failure to deliver within the quoted time line, plus ten (10) days, without just cause as allowed per section 2.6, will constitute default. Remedy may include a reduction in price(s), in the amount of 2%, for each day deliverable is late and / or may include forfeiture of any performance bond.

2.5 Payment Terms, Net 30 Days

The Vendor shall submit invoices for payment. The Department shall forward the invoices to the Department's Bureau of Payments and Receipts for approval. The invoices shall be forwarded to the Department of Revenue and Finance for issuance of payment. The Department of Revenue and Finance shall issue a payment within Thirty (30) days after invoice date as provided in Iowa Code Section 421.40.

- A. Partial Payments on contract may be made monthly by means of a state warrant to the extent of ninety percent (90%) of the value of actual work performed, including material stored at the building site, as determined by the IPTV Project Manager.
- B. The Contractor shall submit to the IPTV Project Manager an application in triplicate for each partial payment on an A.I.A. Form G702 and G703 and, if required, receipts or other vouchers from subcontractors showing his payment to them for materials and labor. Applications shall reflect the valuation of work completed and materials furnished during the previous month's period. "Materials furnished" means materials incorporated in the work and materials suitably stored at the site.
- C. Final retainage shall not be released until at least thirty-one (31) days after completion and final acceptance of all work by the IPTV Project Manager, verification of sales / use tax refund requests, and all other contract requirements have been fulfilled, accepted and approved. The Department shall notify the Vendor in writing of any non-compliance and provide the Vendor an opportunity to cure any non-compliance in accordance with Subsection 6.6.2.1 prior to continued withholding of payment. If the non-compliance is not cured within the requisite time frame set out in Subsection 6.6.2.1, the Department may continue withholding ten (10) percent of any charges payable to the Vendor and may continue to withhold ten (10) percent of any succeeding payment until the non-compliance is cured, or the Department may pursue other remedies available to it under the Contract.
- D. No notification of payment being processed, no payment or partial payment made to the Contractor, nor the partial or entire use or occupancy of the work by IPTV shall be held to constitute an acceptance, in whole or in part, by IPTV prior to making the final payment and final acceptance in full completion of the contract.

2.5.1 No Increase in Charges

The Vendor shall not increase charges during the term of the Contract. The total cost of this contract may not exceed \$ 241,682.00 without a mutually agreed to change in scope.

2.5.2 Overpayments to the Vendor

The Vendor shall promptly, but in all cases within thirty (30) days, pay to the Department the full amount of any erroneous payment or overpayment upon written notice of an erroneous payment or overpayment to which the Vendor is not entitled.

2.5.3 Amount of Business

The Department does not guarantee any set quantity or minimum amount of business to the Vendor. Requirements set forth in the Contract which fails to result in the level of activity or compensation anticipated will not constitute the basis for a price adjustment.

2.6 Termination

2.6.1 Immediate Termination

The Department may immediately terminate the Contract for any of the following reasons upon written notice to the Vendor:

- a. the Vendor furnishes a statement, representation, warranty, or certification in connection with the RFP or the Contract which is materially false or incorrect;
- b. the Vendor or any subcontractor, or an officer or owner of a five (5) percent or greater share of either, is convicted of a criminal offense which in the sole discretion of the Department reflects on the Vendor's integrity;
- c. the Vendor fails to comply with confidentiality laws or provisions of the Contract.

The Department shall not be liable for any costs incurred if termination is for any of the causes stated above. In addition, the Department shall have the right to procure similar services on the open market.

2.6.2 Termination for Default

2.6.2.1 Vendor's Default and Opportunity to Cure

Failure of the Vendor to comply with a material term, condition or provision of the Contract shall constitute default by the Vendor. The Department shall notify the Vendor in writing of the nature of the default. The Vendor shall have thirty (30) calendar days, unless otherwise notified, after such notice to correct the problem(s) that resulted in the default notice. If the default is not corrected to the satisfaction of the Department within the specified time, the Department may issue a notice of immediate termination.

2.6.2.2 Vendor's Default Cured by the Department

If, in the reasonable judgment of the Department, a default by the Vendor is not so substantial as to require termination, reasonable efforts to induce the Vendor to cure the default are unsuccessful and the default is capable of being cured by the Department or another resource without unduly interfering with continued performance by the Vendor, the Department may provide or procure the service to cure the default, in which event, the Vendor shall reimburse the Department for the reasonable cost of the service.

2.6.2.3 Procurement of Similar Services

In the event of termination under this Subsection, the Department shall have the right to procure similar Contract services on the open market. The Vendor shall be liable for the difference between the original Contract price of services and the cost of such services from another vendor, and any other costs directly related to the Vendor's breach such as costs of competitive bidding, mailing, advertising, Department staff time and attorney's fees. The Vendor shall have thirty (30) days after notice from the Department of the amount of such costs in which to submit payment unless an additional period of time is

agreed to by the parties or the Department may deduct the amount of such costs from any charges payable to the Vendor.

2.6.2.4 Delay or Impossibility of Performance

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible by an act of God during continuance of the act of God. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. If delay results from a subcontractor's conduct, negligence or failure to perform, the Vendor shall not be excused from compliance with the terms and obligations of the Contract. This Subsection shall not become operative until the party whose performance is delayed or made impossible notifies the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of services not being performed due to the act of God.

2.6.3 Termination Upon Notice

The Department may terminate the Contract for any reason without penalty by giving written notice to the Vendor at least thirty (30) days before the effective date of termination.

2.6.4 Termination for Insolvency or Bankruptcy

In the event the Vendor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or its assets, or avails itself of or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state related to insolvency or the protection of the rights of creditors, the Department may, at its option, terminate the Contract. In the event the Department elects to terminate the Contract under this provision, it shall do so by sending written notice of termination to the Vendor. The date of termination shall be deemed to be the date such notice is mailed to the Vendor, unless otherwise specified in the notice.

2.6.5 Termination for Withdrawal of Department's Authority

In the event the authority of the Department to perform its duties is withdrawn or limited, or services under the Contract are no longer a responsibility of the Department due to federal or state mandate, the Department shall have the right to terminate the Contract without penalty on or before the date the Department's authority is withdrawn or limited. The Department shall use best efforts to provide thirty (30) days' written notice to the Vendor. The obligations of the parties shall end as of the date specified in the termination notice, and the Contract shall be considered canceled. The exclusive, sole and complete remedy of the Vendor in the event of termination under this Subsection shall be payment for services completed through the effective date of termination.

2.6.6 Termination for Unavailability of Funds

The performance by the Department of any of its obligations under the Contract shall be subject to and contingent upon the availability of federal and state funds lawfully applicable for such purposes. If funds applicable to the Contract are not appropriated or otherwise made available at any time during the Contract term, the Department, without penalty, may terminate the Contract. The Department shall use best efforts to provide thirty (30) days' written notice to the Vendor. The obligations of the parties shall end as of the date specified in the termination notice, and the Contract shall be considered canceled. The exclusive, sole and complete remedy of the Vendor shall be payment for services completed through the effective date of termination.

2.6.7 Rights upon Termination

In the event the Department terminates the Contract prior to expiration, the Department shall pay the Vendor for any partially completed deliverables that the Department desires to have the Vendor turn over to the Department on a percentage of completion basis and for any required operating services provided by the Vendor through the effective date of termination, prorated for any partial month. The Department shall make no payments for unfurnished work, work in progress, or raw materials acquired unnecessarily in advance, in excess of the Department's delivery requirements, or initiated after the notice of termination. In no event shall the Department be obliged to pay or otherwise compensate the Vendor for any lost or expected future profits, or costs or expenses incurred with respect to services not actually performed or deliverables not actually provided to the Department.

Upon termination, the Department shall have the right to assume, at its option, any and all subcontracts for services and materials provided under the Contract.

2.6.8 Transition Events

During the transition period and prior to the actual termination date of the Contract, the Vendor agrees to:

- A) negotiate an extension of the Contract if requested by the Department;
- B) cooperate with the Department and an incoming vendor, if any, to ensure a smooth transition of services;
- C) work with the Department and an incoming vendor, if any, to create and implement a transition plan;
- D) create or modify contractual performance standards to ensure that appropriate staff levels are maintained to manage daily responsibilities under the Contract, including cooperation with transition activities;
- E) comply with the Department's instructions for the timely transfer of any work being performed by the Vendor under the Contract to the Department or an incoming vendor, if any.

2.7 Non-Confidentiality - All information regarding this contract is publicly available.

2.8 Vendor's Confidential or Proprietary Information

The Department acknowledges that in the course of the Vendor performing its obligations pursuant to the Contract; it may obtain confidential and/or proprietary information of the Vendor. The Vendor shall prominently identify information, which the Vendor does not want disclosed. The Department shall treat such information as confidential to the extent such information is determined confidential under Iowa Code Chapter 22 or other provision of law by a court of competent jurisdiction. In the event the Department receives a request for such information, written notice shall be given to the Vendor seventy-two (72) hours prior to the release of the information to allow the Vendor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code.

2.9 Change Orders

2.9.1 Change Order Requests

The Department reserves the right to request from time to time changes to the requirements and specifications of the Contract and the work to be performed by the Vendor under the Contract, including the timing of deliverables.

2.9.2 Procedure

The Department shall submit a request for a Change Order to the Vendor, which shall include a detailed description of the requested service, the priority of the service, a date the service is needed, and a date for submission of a proposal by the Vendor. In its proposal, the Vendor shall describe the procedure and schedule to be employed for the requested service and identify the number of hours necessary to complete the service by labor category and the associated cost to implement the change request. If necessary, the Vendor and the Department shall meet to discuss and clarify any issues related to the requested service. Upon written approval by the Department, the Vendor shall perform the requested service and receive payment according to the terms of the Change Order based upon the rate specified in the Vendor's cost proposal.

If the Department does not accept the Vendor's proposal, the Department may withdraw or modify its change request. If the Department modifies its change request, the procedures set forth above shall apply.

2.9.3 No Agreement on Change Order

If the parties are unable to reach an agreement in writing within fifteen (15) days of receipt of the Vendor's proposal or modified proposal, the Director of the Department shall make a determination of the compensation, procedure or schedule, and the Vendor shall proceed with the work according to the Director's decision, subject to the Vendor's right to appeal the decision pursuant to Subsection 6.18.9.

2.9.4 Additional Services

If the Department requests or directs the Vendor to perform any service or function that is consistent with and similar to the services being provided by the Vendor under the Contract, but which the Vendor reasonably and in good faith believes is not included within the scope of the Vendor's responsibilities set forth in the Contract, then prior to performing such service or function, the Vendor shall promptly notify the Department in writing that it considers the service or function to be an "Additional Service" for which the Vendor should receive additional compensation. If the Vendor does not so notify the Department, the Vendor shall have no right to claim thereafter that it is entitled to additional compensation for performing the service or function. If the Vendor does notify the Department the service or function shall be governed by the change order procedure in Subsections 6.9.2 and 6.9.3.

2.10 Insurance

2.10.1 Coverage Requirements

The Tower Contractor shall purchase and maintain insurance as will provide protection from claims under workmen's compensation laws, disability benefit laws and other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of employees and claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible property, including loss of use resulting there from.

The Tower Contractor shall purchase and maintain all-risk insurance upon the project in the amount of \$2,000,000.00 general aggregate liability and \$5,000,000.00 umbrella excess liability.

Prior to commencement of the work, the Tower Contractor shall file with the Owner certificates of such insurance, acceptable to the Owner. All such policies shall name Iowa Public Television as the certificate holder. The Vendor shall maintain in effect, and file certifications with the Department upon execution of contract, at its own expense, the following types and amounts of insurance covering its work, from an authorized insurer:

- A) Commercial general liability insurance (including premises/operations liability, vendors liability, contract liability, full USA OEM products liability, completed operations liability, broad form property damage liability, personal injury liability, and extended bodily injury and death coverage) in a minimum amount of \$2,000,000 per occurrence and \$5,000,000 aggregate combined single limit for bodily injury or death, personal injury or property damage. The Vendor shall obtain a waiver of any subrogation rights the insurance carrier may have against the Department or the State of Iowa and the waiver shall be indicated on the certificate of coverage.
- B) Automobile liability insurance (including any auto, hired autos and non-owned autos) covering transportation of State clients under this Contract in a minimum amount of \$1,000,000. The Vendor shall obtain a waiver of any subrogation rights the insurance carrier may have against the Department or the State of Iowa and the waiver shall be indicated on the certificate of coverage.
- C) Umbrella liability insurance in a minimum amount of \$2,000,000.

- D) Workers' compensation insurance covering the Vendor's employees as required by Iowa law.
- E) Contractor's Risk Insurance (Contractor's Option) Contractor shall furnish and pay for risk insurance, providing coverage for at least the following losses: Theft, fire, with extended coverage, vandalism and malicious damage to materials incorporated in the project, stored either on or off the job site. If this insurance coverage is not provided, the Contractor shall assume all responsibility for their perils outlined above which may occur prior to project completion and acceptance.

The Vendor's insurance shall insure against any loss or damage resulting from work performed under the Contract. All insurance policies shall remain in full force and effect for the entire term of the Contract. Each policy shall name the State of Iowa and the Department as an additional insured or loss payee, as applicable. The Vendor and any subcontractor performing work under the Contract shall provide certificates of the required insurance to the Department at the time of execution of the Contract. Acceptance of the certificates shall not relieve the Vendor of any obligation under the Contract.

Any contract(s) entered into between the state and the successful vendor shall not contain any provisions that: (1) limit the liability of the successful vendor (or any approved subcontractor) for breach of contract, breach of warranty, misrepresentation, bad faith, fraud, indemnity, tort, negligence, gross negligence, strict liability, or any other claim or cause of action; (2) limit the liability of the successful vendor (or any approved subcontractor) for any type of damages or loss, including, without limitation, consequential, indirect, incidental, special, and exemplary damages; (3) limit or cap the total liability of the successful vendor (e.g., a liability cap or ceiling equal to the value of the contract or a multiple thereof); (4) limit the rights or remedies of the state; or (5) disclaim any representations, warranties, conditions or guarantees, whether express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose, non-infringement, title and any warranties arising by statute or out of course of dealing, course of performance or usage of trade.

2.10.2 Coverage

All insurance policies required by the Contract shall provide coverage for all claims arising from activities occurring during the performance of the Contract regardless of the date the claim is filed.

2.10.3 Subcontractors

The Vendor shall require any subcontractor to purchase and maintain similar policies of insurance as described in this Subsection.

2.10.4 Notice of Cancellation

The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Department.

2.11 Bonding Requirements

2.11.1 Fidelity Bond - Not Required.

2.11.2 Performance Bond

Contractor shall post a Performance Bond in the amount of 20% of the value of the contract or \$48,336.40. Contractor shall execute and deliver to the State, contemporaneously with the signing of the agreement, a certificate evidencing a performance bond in the amount of twenty percent (20%) of the total cost of this agreement (including all selected options) in the name of the State of Iowa.

The bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in the State of Iowa, acceptable to the State of Iowa. The bond shall be in effect for the duration of this Agreement and any renewals thereof. The required bond shall be conditioned upon and for the full performance and actual fulfillment of each and every term, condition, provision, and obligation of the Contractor and its officers and employees arising under this agreement. The State of Iowa's right to recover from the bond shall include all costs and damages associated with transferring the services provided under this agreement to another contractor or the state as a result of Contractor's failure to perform.

The bond shall be accompanied by a valid Power-of Attorney (issued by the surety company and attached, signed and sealed, with the corporate embossed seal, to the bond) authorizing the agent who signs the bond to commit the company to the terms of the bond, and stating (on the face of the Power-of-Attorney) the limit, if any, in the total amount for which he or she is empowered to issue a single bond.

2.12 Indemnification

2.12.1 General Indemnification

- A) The Vendor shall defend, indemnify and hold harmless the State of Iowa, the Department, its employees and agents from any and all liabilities, damages, settlements, penalties, judgments, fines and claims, and all related costs and expenses, including reasonable attorney's fees of the Attorney General's Office, and the costs and expenses and attorney's fees of other counsel required to defend the Department arising out of or related to:
- B) any claim, demand, action, citation or legal proceeding against the State, the Department, its employees and agents arising out of or related to occurrences that the Vendor is required to insure against as provided for in the Contract;
- C) any claim, demand, action, citation or legal proceeding against the State, the Department, its employees and agents arising out of or related to any negligent or intentional act or omission of the Vendor, its principals, officers, employees, agents, board members, or subcontractors;
- D) any claim, demand, action, citation or legal proceeding against the State, the Department, its employees and agents arising out of or related to the release of information that the Vendor is required to maintain as confidential information pursuant to federal and state law and as provided for in this Contract;

- E) any claim, demand, action, citation or legal proceeding against the State, the Department, its employees and agents arising out of or related to any failure by the Vendor or any subcontractor to comply with applicable federal, state and local laws, regulations, rules, and orders; or
- F) any claim, demand, action, citation or legal proceeding against the State, the Department, its employees and agents arising out of or related to an act or omission of the Vendor or any subcontractor in their capacity as an employer of a person.

2.12.2 Indemnification Procedure

After receipt by the Department of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in which it will seek indemnification, the Department shall notify the Vendor of such claim in writing. Failure to notify the Vendor shall not relieve the Vendor of its indemnification obligations except to the extent that the Vendor can demonstrate damages attributable to such failure. Within fifteen (15) days following receipt of written notice from the Department relating to any claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due, the Vendor shall notify the Department in writing if the Vendor elects to assume control of the defense and settlement of the claim (a "Notice of Election").

If the Vendor delivers a timely Notice of Election, the Vendor shall be entitled to have sole control over the defense and settlement of such claim; provided, however, that:

- A) the Department shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the Department about the status and progress of the defense;
- B) the Vendor shall at the request of the Department, demonstrate to the reasonable satisfaction of the Department the Vendor's financial ability to carry out its defense and indemnity obligations;
- C) the Vendor shall periodically advise the Department about the status and progress of the defense and shall obtain the prior written approval of the Department before entering into any settlement of such claim or ceasing to defend against such claim, which approval shall not be unreasonably withheld; and
- D) to the extent that any principles of Iowa governmental or public law may be involved or challenged, the Department shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Iowa governmental or public law.

If the Vendor does not deliver a Notice of Election as provided above, the Department shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the Vendor. The Vendor shall promptly reimburse the Department for all such costs and expenses.

2.13 Rights in Data

The Department shall be and remain the owner of all data and records provided to the Vendor and all reports prepared by the Vendor pursuant to the Contract. The Vendor shall not use the Department's data, records and reports for any purpose other than providing services under the Contract, nor will any part of the data, records and reports be disclosed, sold, assigned, leased, or otherwise disposed to third-parties or commercially exploited by or on behalf of the Vendor. The Vendor will not possess or assert any lien or other right against the Department's data records and reports.

2.13.1 Ownership of Work Product

The Department shall own all work products developed or furnished in connection with the Contract by the Vendor or any subcontractor.

2.13.2 General Skills

Notwithstanding anything to the contrary in this Subsection, the Vendor shall be free to use and employ its general skills, know-how and expertise and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing services under the Contract, so long as it acquires and applies such information without disclosure of any confidential or proprietary information of the Department and without any unauthorized use or disclosure of work product developed in connection with the Contract.

2.14 Liabilities

2.14.1 Increased Costs or Expenses

The Vendor acknowledges and agrees that the Department shall not be responsible for or liable to the Vendor or its subcontractor(s) for any increased costs or expenses that may be incurred by the Vendor under the Contract.

2.14.2 Other Department Vendors

The Vendor acknowledges and agrees that the Department shall not be responsible for or liable to the Vendor or its subcontractor(s) for any damages that may be suffered by the Vendor as a result of any act or omission of any other vendor of the Department.

2.14.3 Legislative Reorganization

The Vendor expressly acknowledges that the project is subject to legislative change by either the federal or state government. Should either legislative body enact measures, which alter the project, the Vendor shall not hold the Department liable in any manner for the resulting changes. The Department shall use best efforts to provide thirty (30) days' written notice to the Vendor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Department's right to terminate the Contract pursuant to Section 6.6.

2.15 Project Management

2.15.1 Meetings with Department

Key staff of the Vendor and any subcontractor responsible for the administration of the Contract shall be accessible to Department staff and shall meet with Department staff and staff of other vendors as requested at a time and place specified by the Department. Within fifteen (15) days of a change in staffing of key personnel, the Vendor shall notify the Department of the change. Copies of the Plans and Specifications are to remain on file at the office of the IPTV Project Manager.

2.15.2 Contract Compliance and Monitoring

The IPTV Project Manager or his representative will carry on periodic site inspections with all contractors involved in the project to insure coordination of the project. The Vendor and any subcontractor shall meet with the Department and provide information as requested to review the Vendor's compliance with the terms of the Contract and level of performance. The Vendor agrees the Department or the Department's duly authorized and identified agents or representatives of the state and federal governments shall have the right to access any and all information pertaining to the Contract, conduct site visits, conduct quality control reviews, review Contract compliance, assess management controls, assess the Contract services and activities, and provide technical assistance.

2.15.3 Status of Vendor

The Vendor and any subcontractor shall at all times be independent vendors and not employees of the State of Iowa. The Vendor and any subcontractor shall be responsible for payment of taxes, fees and charges when due. Neither the Vendor nor the Department, unless otherwise specifically provided for in the Contract, has the authority to enter into any agreement or create any obligation or liability on behalf of, in the name of, or binding upon the other party.

2.15.4 The Contractor

- a) The Contractor shall furnish all permanent and temporary guards, signs, fencing, shoring and underpinning and other protection necessary, if any, in the performance of the contract and for the necessary protection of all public and private property and shall be responsible for any damage caused by failure to comply with this requirement.
- b) Before completion of the contract, the Contractor shall replace or satisfactorily repair all damaged materials and surfaces, which were damaged due to his operation on the project.
- c) The Contractor shall continuously maintain adequate protection of all new work from damage and shall protect the Owner's property and adjacent property from damage arising in connection with this contract.

- d) Insofar as possible, the Contractor and all subcontractors must employ such methods or means in carrying out the work so as to cause any interruption of, or interference with, the work of any other subcontractor or trade.
- e) The Contractor shall keep the IPTV Project Manager informed of the progress and status of work.
- f) All rules and instructions from IPTV authorities and management shall be rigidly enforced by the contractor and adhered to by all workers. Contractor's employees or sub-contractors found unacceptable shall be permanently removed from the project.
- g) The Contractor's employees shall be required to park personal vehicles in designed areas of the facility grounds. Contractor's equipment and vehicles shall be parked and locked in areas specified by IPTV Project Manager when not in use.
- h) The Contractor shall be given certain areas for storage of his materials and equipment. He shall confine his operations to these areas and shall not be allowed to use any other portion of the grounds for storage or dumping of materials.
- i) Any damage of any kind to the new building shall be repaired satisfactorily by the Contractor at no additional cost to IPTV.
- j) Any damage done to any equipment shall be repaired satisfactorily by the Contractor at no additional cost to IPTV.
- k) Contractor shall avoid damage to the grounds around the building.
- l) Material stored on-site in approved locations shall be adequately protected from the weather and other possible causes of damage. Cooperate with the IPTV Project Manager for any such enclosures.
- m) Contractor will be responsible for wiring in temporary power to the existing power feed at the site as needed. Contractor will be responsible for removing all modifications made at the end of the job. IPTV may make available electric service from existing locations within the site. The Contractor shall verify the voltage available and provide all connecting switches, fuse protection and wiring necessary to provide temporary light and power throughout the project area until new services is ready for use. No charge will be made for current use, but the Contractor shall avoid unnecessary usage or overloading of service provided.
- n) The Contractor must provide portable facilities and water as needed without extra cost to IPTV.
- o) Contractor shall provide a dumpster for all trash and debris and will be responsible for a complete clean up of all trash and debris at the end of the project. Throughout the period of project, the Contractor shall clean up all work and yard areas and keep

the area reasonably free from debris, etc., as required for proper protection for the work. Prior to final acceptance, the Contractor shall remove all debris, tools, and equipment from the project site. Building and site shall be completely cleaned and made ready for use.

2.15.5 Subcontract orders

The Department reserves the right to give prior approval to any subcontract order entered into by the Vendor for requirements of the Contract. A subcontract order shall not affect payment by the Department to the Vendor or the distribution of payments. All subcontract orders shall be in writing and copies shall be provided to the Department upon request. The terms and conditions imposed on the Vendor under the Contract shall also apply to any subcontractor and shall be incorporated into any subcontract order. The Vendor shall be responsible for all work performed under the Contract, whether or not subcontractors are used. A subcontract order shall not relieve the Vendor of any responsibility for performance under the Contract.

The Vendor shall notify the Department of any planned use of subcontractors. This notice shall include, at a minimum, the name and address of each subcontractor, the scope of work to be performed by each subcontractor, the subcontractor's qualifications and the estimated dollar amount of each subcontract order. If during the course of the subcontract order period the Vendor or subcontractor wishes to change or revise the subcontract order, prior written approval from the Department shall be required. The Department shall have the right to request the removal of a subcontractor for good cause.

2.15.6 Approval

The Department shall give any approval or consent required or requested pursuant to the Contract in a timely manner. The Department's approval and consent shall not be unreasonably withheld.

2.15.7 Contract Disputes

The parties shall agree to meet informally to solve any operating or contract disputes (except as otherwise specifically provided for in this agreement), and to mediate the dispute prior to filing a court action (except an action for emergency injunctive relief). A mediator may be established and the costs of such mediation shall be shared equally between the parties. The parties are encouraged to resolve their operational disputes at the project manager level.

2.16 General Provisions

2.16.1 Assignment/Change of Control

No assignment, transfer, or other conveyance of the rights, duties or obligations of the Contract shall be made by the Vendor without the written consent of the Department. This provision includes the reassignment of the Contract due to change in ownership of the Vendor. Any assignment shall be made explicitly subject to all defenses, setoffs or counter claims that would have been available to the Department against the Vendor in the absence of such assignment. All

terms, provisions and conditions of the Contract shall be binding upon the parties and their respective successors and assignees.

2.16.2 Compliance with the Laws and Regulations

The Vendor and any subcontractor shall comply with applicable federal, state and local laws, regulations, rules, and orders. The Vendor and any subcontractor shall also comply with applicable federal and state laws regarding business permits and licenses that may be required to perform services under the Contract. The Vendor and any subcontractor shall also comply with state and federal civil rights laws and regulations, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disability Act of 1990. All applicable State laws, municipal ordinances and the rules and regulations of all authorities having jurisdiction over the project shall apply to the contract throughout and shall be deemed to be included the same as though therein written in full.

2.16.3 Contract Modifications

The parties agree to meet and negotiate in good faith any modifications to the Contract which the parties believe are necessary. Modifications shall be mutually agreed to by the Vendor and the Department and incorporated into the Contract as a written amendment. Without written approval of the Department, the Vendor shall not materially alter or vary the services to be performed. The Department reserves the right to modify the Contract as a result of changes in federal or state statutes, regulations, policies, or rules.

2.16.4 Cumulative Rights

The various rights powers, options, elections, and remedies of either party provided in the Contract shall be construed as cumulative and not exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, or shall in any way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way UN-remedied, unsatisfied or UN-discharged.

2.16.5 Equal Employment Practices

The Vendor shall comply with all provisions of federal, state, and local laws, rules and executive orders which apply to insure that no client, employee or applicant for employment is discriminated against because of race, religion, color, age, sex, national origin, or disability. The Vendor, if requested, shall provide state and federal agencies with appropriate reports as required to insure compliance with equal opportunity laws and regulations. The Vendor shall insure that its employees, agents and subcontractors comply with the provisions of this Subsection.

2.16.6 Choice of Law and Forum

The Contract shall be construed and governed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with the Contract shall be brought in an appropriate Iowa forum.

2.16.7 Headings or Captions

The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs.

2.16.8 Integration

The Contract and its inclusions of documents by reference, represents the entire contract between the parties and neither party is relying on any representation that may have been made which is not included in the Contract.

2.16.9 Lobbying Restrictions

The Vendor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements.

2.16.10 No Conflict of Interest

The Vendor warrants that it has no interest and shall acquire no interest that would conflict in any manner or degree with the performance of the services under the Contract.

2.16.11 Not a Joint Venture

Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, or other association of any kind of agent and principal relationship between the parties. The status of the Vendor and all subcontractors shall be that of an independent vendor. Neither party, unless otherwise specifically provided in the Contract, has the authority to enter into any contract or create a binding obligation or liability on behalf of or in the name of the other party.

2.16.12 Notices

Notices under the Contract shall be in writing, to the representative of the party to receive notice identified below, at the address as it appears below. The effective date for any notice under the Contract shall be the date of mailing, which may be effected by certified U.S. Mail return receipt requested, postage prepaid, or by recognized overnight delivery service such as Federal Express or UPS.

If to Department: Paul J. Ollinger, Asst. Dir. of Eng. / Transmission
Iowa Public Television, 6450 Corporate Dr., Johnston, IA 50131
Ph: 515-242-3199; Fax: 515-242-4151; Email: ollie@iptv.org

If to Vendor: Scott Aalfs, Executive Vice President
Sabre Communications Corp., 2101 Murray St, Sioux City, IA 51111
Ph: 712-258-6690; Fax: 712-279-0814; Email: saalfs@sabrecom.com

2.16.13 Obligations Beyond Contract Term

The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the contract. All continuing obligations of the Department and Vendor incurred or existing under the Contract as of the date of termination or cancellation shall survive the termination or cancellation.

2.16.14 Obligations of Joint Entities

If the Vendor is a joint entity, consisting of more than one individual, partnership, corporation, or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of such activities and obligations.

2.16.15 Publications

The Vendor shall not publish results of Contract activity without prior written approval of the Department. Such publication (written, visual or audio) shall contain an acknowledgment of Department support. A copy of any such publication shall be furnished to the Department at no cost.

2.16.16 Sever-ability

If any provision of the Contract is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the validity or enforceability of any other part or provision of the Contract.

2.16.17 Solicitation

The Vendor warrants that no person or selling agency has been employed or retained to solicit and secure the Contract for commission, percentage or contingency excepting bona fide employees or selling agents retained for the purpose of securing business.

2.16.18 Third-Party Beneficiaries

There are no third-party beneficiaries to the Contract. The Contract is only to benefit the Department and the Vendor.

2.16.19 Utilization of Certified Targeted Small Businesses (TSB)

The Vendor acknowledges it is the policy of the State that TSBs shall have the maximum, practicable opportunity to participate in the performance of state contracts. Where feasible or applicable under the Contract, the Vendor agrees to make a reasonable effort to subcontract order with TSBs provided that to do so is not inconsistent with the efficient performance of the Contract.

2.16.20 Suspension and Debarment

The Vendor certifies pursuant to 31 CFR Part 19 that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

2.16.21 Waiver

Except as specifically provided in a waiver signed by the Department and the Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right with respect thereto.

2.16.23 Drug Free Work Place

The Vendor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 as implemented at 45 CFR Part 76.

2.17 Authorization

Each party to this Contract represents and warrants to the other that:

- It has the right, power and authority to enter into and perform its obligations under this Contract.
- It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

2.18 Sovereign Immunity

The State specifically reserves the defense of sovereign immunity as allowed by state or federal law or regulations for any claim arising out of or related to the duties and obligations imposed by this Contract. Every person party to this agreement is hereby notified and agrees that the State of Iowa, the user agency and any federal funding source for the user agency are immune from liability and suit or from contractors' activities involving third parties and arising from this contract.

2.19 Service of Process

Vendor irrevocably consents to service of process by certified or registered mail addressed to Vendor's designated agent. Vendor appoints James D. Mack, as its agent to receive service of process within the

State of Iowa. If for any reason Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Department with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Department of the notice required under this section. Nothing in this provision will alter the right of the Department to serve process in any other manner permitted by law.

2.20 Tax Refund

In accordance with the Iowa law, the Contractor shall pay all Iowa Sales and Use Taxes for all materials incorporated in the project under this contract. The Contractor shall submit to the Project Manager an original (and one copy) of the Iowa Department of Revenue and Finance's Form #35-002 (or the current form in use) properly completed and notarized to recover all Iowa Sales and Use Taxes. Contractor shall state Contract or PO#, Supplier name and address, type of material purchased, total price, amount of Sales and Use Tax paid, and to whom paid and when. Use of the term "Miscellaneous" shall be avoided. Final payment cannot be made to the Contractor until the submitted forms have been approved as part off the required documents required for submission at time of project closeout.

2.21 Guarantee and Warranty

The Contractor shall guarantee all work executed under this contract as to workmanship for a period of not less than one year after the date of final acceptance and all portions of this broadcast tower will shall be provided with and covered by a two (2) year warranty. Warranty period to begin upon owner's acceptance of completed fully functional facility.. Neither the final payment, nor any provision of the contract documents, shall relieve the Contractor of any responsibility for faulty materials or workmanship. And he shall remedy any defect thereto and pay for any damage to other work resulting there from, which shall appear within a period of one year from the date of final acceptance.

2.22 Reserved

2.23 Reserved

2.24 Subcontractors

Tower Contractor will utilize a subcontractor in performance of the contract, Wireless Horizons of St. Peters, MO. The Tower Contractor assumes all responsibility and liability concerning the activity of all sub-contractors.

2.25 Owner's Responsibilities

Tower Contractor requires IPTV to provide the following documentation and material in order for the Tower Contractor to complete the project:

1. Copies of appropriate FCC and FAA Licenses.

2. IPTV shall move existing shelter from existing location and tower contractor shall assist with shelter relocation as necessary.
3. IPTV shall supply the antennas, transmission lines and all associated hardware for the following antennas:
 - a) ERI Carina ALP24L4-HSOX-18
 - b) Andrew DB264
 - c) Wade WL-7-13/DQ Quad Array
 - d) (2) Wade WL-7-13/DQ Quad Arrays
 - e) Scala Paraslot SL-8-3
 - f) Sitco MU12-1-14-15

2.26 Hold Harmless

The Tower Contractor hereby agrees to defend, indemnify, and hold the Owner harmless from any loss resulting from bodily injuries, death, or damages to property arising directly or indirectly out of any act or failure to act on the Tower Contractor's part in the performance of the work undertaken under this contract. The Tower Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of the contract documents for the benefit of the Owner.

2.27 Concurrent Work

The Owner reserves the right to let other contracts in connection with this work. The Tower Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work.

It shall be the responsibility of the Tower Contractor to provide full design and construction coordination with other vendors supplying products and materials to be mounted on the tower to insure that the tower is properly designed and constructed to accept those devices without requiring tower design modifications on site. Such items shall include, but not be limited to, antennas, transmission lines and support devices, transmitter buildings and the transmission line bridge/transmitter building interface. Such coordination may include, but is not limited to, accepting shipments, unloading and temporary storage of antennas, transmission lines, etc. It shall also include providing conduit and wiring as needed for telephone, AC power and other interface items needed by suppliers of equipment such that the Owner shall be supplied with a full and functional product.

Should the Tower Contractor require information for the design and erection of the tower that is not forthcoming from the vendor providing the material or service, it shall be the responsibility of the Tower Contractor to notify the Owner and the uncooperative supplier in writing of the lack of information or material.

If any portion of the Tower Contractor's work depends upon proper execution or results of any other provider, The Tower Contractor shall promptly inspect and report to the Owner any deficiencies that render the work unsuitable for the Tower Contractor's use. Failure to so inspect and report shall constitute an acceptance of the other provider's work as fit and proper for the reception of the Tower Contractor's work.

2.28 Turnkey Construction

The price for this project includes design and installation of foundations, tower structure and specified auxiliary items.

The foundation design and installation is part of the Contractor's accepted Scope of Work the Tower Contractor shall have the responsibility for correctness and accuracy of soil boring samples and/or other reports, which are provided by the Owner. This may require additional geotechnical work on behalf of the Tower Contractor.

The Tower Contractor shall insure proper routing and support of the antennas, transmission lines and conduits. Design and construction of structural supports for transmission lines and all antenna mounts shall be the responsibility of the Tower Contractor. The Tower Contractor will be responsible for erection of all antennas, transmission lines and other devices identified within these specifications. All required lighting suppression, and all interfaces between the transmitter building, the transmission line ice bridge, the guy cables and any other portion of the structure called for in these specifications or reasonably expected to be a part of a tower structure shall also be the responsibility of the Tower Contractor.

The Tower Contractor shall coordinate with the vendors providing antennas, transmission lines, the transmitter building construction and any item purchased by the Owner for installation by the Tower Contractor to insure that the Tower Contractor and the vendors prepare their designs and installations for proper integration into the total system of all components.

Prior to commencement of the tower field assembly, the Tower Contractor shall provide the Owner with a time line, which delineates when each item of owner furnished equipment will be required to be available to the Tower Contractor. Iowa Public Television assumes no liability to contractor for any delays for late delivery of equipment and supplies or for weather.

2.29 Safety Plan

Special consideration shall be given to worker safety while building and tower constructions are both in progress. It shall be the responsibility of the Tower Contractor to develop a Job Hazard Analysis and formulate a written safety plan with the building general contractor, after which copies shall be distributed to all prime contractors, subcontractors, the Owner, architect, Owner's Engineer and any other companies or personnel which may be required to be on site during the construction of this project.

2.30 Acceptance

Owner or his assigned representatives shall have the right to perform periodic inspections during the construction process and will be notified by Tower Contractor when specific milestones occur during the construction process such as completion of foundations, each guy level, final plumb and tension prior to addition of low frequency vibration devices. Prior to final acceptance of the tower, Owner reserves the right to perform final acceptance inspection by qualified representative either a direct employee or

subcontractor to be chosen by Owner. Inspection shall consist of but not be limited to: plumb, tension, twist, torque, finish thickness and any other parameters deemed necessary by visual or mechanical means.